The Teething of EU's Mutual Defence Clause

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France was the first member state to call for mutual assistance under Article 42(7) of the Lisbon treaty. The move came as a surprise. Most of the discussions in previous days were focused on the possibility to use the much heftier Article 5 defence clause of NATO. Compared to the tangible military assistance that NATO partners can offer, Europe's obligation to assist has so far been seen as toothless and symbolic. While the EU's mutual defence clause is still limited in its effect, its use is a timely reminder that there is strong interest within the EU to work closer together on defence.

On paper, Article 42(7) has not too much to offer. First, the level of commitment is lower. NATO's Article 5 is a tool of "collective defence" whereby an attack against one ally is seen as an attack against all allies. Compared to this, the EU treaty is less explicit in its wording and has a built-in safeguard. The obligation to assist does not affect "the specific character of the security and defence policy of some member states". The phrase was added with the military non-aligned member states in mind, such as Finland, Sweden and Austria. But, if other member states choose to contribute only to a limited extent, there is little political and legal leverage – the European Court of Justice does not have jurisdiction in this area – to push them for more.

Second, the EU mutual defence clause misses any structural underpinning. It has never been defined how it can be implemented. Formal EU institutions, such as the European External Action Service, the European Commission and even the Council in which EU ministers meet, do not have any defined role. EU institutions in any case lack important capacities to coordinate concrete actions, such as permanent military headquarters. The effect is only bilaterally binding on member states.

Third, there is less "hard power" behind the solidarity. Without the US, which is obviously no partner to the EU mutual defence clause, Europe's military is less capable of NATO-type out-of-area missions. Despite efforts of recent years to integrate European defence capabilities, they remained technically fragmented across member states. The lack of European hard power was visible during the air campaign in Libya in 2011, when European allies were mostly dependent on the muscles of the transatlantic partner. Europe might be able to deploy more force and spend additional money in the current fight against terror, as the heightened threat perception ensures public support. However, some of the missing integrated military systems and structures, such as a permanent EU military headquarter, will not appear overnight.

Why would France then choose EU´s mutual defence clause? France had a political reason not to call on NATO, as a NATO mission might not have been acceptable to players in the region and might have affected the regional balance. However, it is not excluded that France will call for NATO assistance in the future. EU's Article 42(7) and NATO's Article 5 are not mutual exclusive. As the EU mutual defence clause explicitly states: "Commitments and cooperation in this area shall be consistent with commitment under the NATO, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation."

The EU and NATO clauses rather complement each other. France needed support from European allies, which was not in the nature of NATO. First, EU assistance offered a unified European political statement. France could show that there is a united European position condemning not just only the Paris attacks, but also calling for coordinated action. In times of cross-European divisions over the refugee crisis as well as other centrifugal tendencies, such as the Brexit debate and the unsolved Eurocrisis, a unanimous sign of solidarity was already an important political signal in itself. Even though France was sometimes disappointed by the slow progress, it was throughout the EU's history always in support of an independent EU defence policy.

Second, France used Article 42(7) as it specifically seeks to share its burden of EU military engagement within the Common Security and Defence Policy (CSDP). Notably, France did not use the so-called "solidarity clause" of the EU (Art 222 TFEU) even though it was meant to be invoked in cases of natural or man-made disasters (such as terrorist attacks). The solidarity clause was left untouched likely because CSDP is not subject of it.

French contribution to EU missions had already gone down for several years with the aim to cut defense spending, while keeping an autonomous capacity to act abroad. The French call for more engagement of European member states in other crisis theatres, such as the Sahel, shows that France needs European solidarity to concentrate its forces on ISIS. The immediate German offer to shoulder more responsibility in Mali is a case in point, even though Germany already announced to step up its engagement before the current developments.

The call for EU mutual assistance was thus not necessarily a step towards deeper integration of CSDP. The EU has not the capabilities, nor the political will, to start a military mission against ISIS. Such an effort would still require NATO capabilities under US leadership. It is also clear that the mutual defence clause is not the "silver bullet" in the fight against ISIS. It is one step in a wider effort of France and Europe, which might in the future still include NATO assistance under Article 5.

We still have to see if the mutual defence clause finally grows its first teeth and what concrete European action it will trigger. At least it provides the possibility to "cover the back" of France when its action is needed elsewhere. It might also remind European partners that it is worth looking into fostering EU defence capabilities in the future and think more concretely about implementing other unused potentials of the Lisbon Treaty, such as permanent structured cooperation, which would allow to build a "coalition of the willing" and deepen defence cooperation in a core group of member states.

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